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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

RAD REFERRAL: 15L-13
DATE REFERRED: May 5, 2015
DATE OF NOTIFICATION: May 8, 2015
DATE OF RESPONSE: June 30, 2015
DATE ACTIVATED: June 7, 2015

ELECTION CYCLE: 2012
EXPIRATION OF SOL: June 11, 2017 -
October 27, 2017

SOURCE:

RAD REFERRAL

RESPONDENTS:

Florida Freedom PAC and Gihan J. Perera
in his official capacity as treasurer

RELEVANT STATUTES

52 U.S.C. § 30104(b)¹
52 U.S.C. § 30104(g)
11 C.F.R. § 104.4(c)

AND REGULATIONS:

INTERNAL REPORTS CHECKED:

RAD Referral Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter was generated by a referral from the Commission's Reports Analysis Division ("RAD") to the Office of General Counsel ("OGC") concerning Florida Freedom PAC's ("FFPAC") failure to file or timely file 24-Hour and 48-Hour Reports of independent expenditures ("IE") totaling \$604,423.73 during the 2012 election cycle.² While FFPAC acknowledges "some failures to file complete or timely reports," it maintains that it was

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

1 “impossible to provide perfect reporting in the timeframe required” given the nature of its
2 activity.³ However, FFPAC inaccurately characterizes the reporting of the IEs included in the
3 referral. FFPAC did not provide good faith estimates of this activity; it either completely failed
4 to report hundreds of 2012 IEs, or reported them well after the 2012 primary and general
5 elections. Thus, we recommend that the Commission open a MUR, find reason to believe that
6 Florida Freedom PAC and Gihan J. Perera in his official capacity as treasurer violated 52 U.S.C.
7 § 30104(g) by failing to file IE reports or filing them untimely, and authorize pre-probable cause
8 conciliation with FFPAC.

9 II. FACTUAL AND LEGAL ANALYSIS

10 A. Facts

11 FFPAC is an independent-expenditure-only political committee registered with the
12 Commission since May 11, 2012.⁴ RAD identified 381 IEs totaling \$604,423.73 for which
13 FFPAC either did not file 24- and 48-Hour Reports or filed them late.⁵

² Reports Analysis Division (“RAD”), Referral of Florida Freedom PAC, 15L-13 (May 5, 2015) (“Referral”), incorporated herein by reference. The Referral initially reflected independent expenditures totaling \$612,636.77. RAD subsequently adjusted the total figure to \$604,423.73 after discovering that some independent expenditures were included in error.

³ Committee Resp. at 1 (June 30, 2015).

⁴ See Statement of Organization (May 11, 2012), available at <http://docquery.fec.gov/pdf/230/12030810230/12030810230.pdf>.

⁵ Referral at 1.

Type of Report	Report on which Expenditure disclosed on Schedule E	Number of Independent Expenditures involved	Number of Reports not filed	Number of Reports not timely filed	Cumulative Amount
48-Hour	Amended 2012 July Quarterly Report	1	1	N/A	\$210,915.52
48-Hour	Amended 2012 October Quarterly Report	193	10	N/A	\$319,077.65
24-Hour	Amended 2012 30-Day Post-General Report	187	7	6	\$74,430.56
	Totals	381	18	6	\$604,423.73

1. Missing 48-Hour Reports Stemming from the Amended 2012 July Quarterly Report

On October 11, 2012, the Committee filed an Amended 2012 July Quarterly Report, covering the period from April 1, 2012, to June 30, 2012, which included a Schedule E (Itemized Independent Expenditures) disclosing three IEs totaling \$279,445.52, made in support of one federal candidate.⁶ On January 10, 2013, RAD sent the Committee a Request for Additional Information ("RFAI") regarding its failure to file a 48-Hour Report regarding one independent expenditure totaling \$210,915.52.⁷ On March 19, 2013, the Committee responded to the RFAI by filing a Miscellaneous Electronic Submission ("Form 99"),⁸ which asserted that the

⁶ See Committee Amended 2012 July Quarterly Report (Oct. 11, 2012), available at <http://docquery.fec.gov/pdf/564/12954317564/12954317564.pdf>.

⁷ See Referral at 2.

⁸ See Florida Freedom PAC, Form 99 (Feb. 14, 2013), available at <http://docquery.fec.gov/pdf/162/13960823162/13960823162.pdf>.

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1 Committee was unable to produce the required 48-Hour Report because it lacked the "day-by-
2 day data of its expenditures or the in-kind support received from SEIU PEA for June [2012]."⁹
3 The Committee also argued it would serve no purpose to try to produce this Report after the
4 fact.¹⁰

5 **2. Missing 48-Hour Reports Stemming from the Amended 2012 October**
6 **Quarterly Report**
7

8 On February 14, 2013, the Committee filed an Amended 2012 October Quarterly Report
9 covering the period from July 1, 2012, to September 30, 2012, which included a Schedule E
10 disclosing 770 IEs totaling \$1,636,678.74, in support of four federal candidates.¹¹ On September
11 4, 2013, RAD sent the Committee a RFAI regarding, among other things, the Committee's
12 apparent failure to file 48-Hour Reports regarding 227 IEs totaling \$327,094.33.¹² In response,
13 the Committee filed a Form 99 on September 26, 2013, but it did not address the 227 IEs.¹³
14 Instead, the Committee focused on a different portion of the RFAI relating to 48-Hour Reports it
15 filed for other IEs that were not itemized on Schedule E of the 2012 Amended October Quarterly
16 Report.¹⁴ The Committee explained that it estimated its expenses for canvassing activity on
17 those 48-Hour Reports and then disclosed its actual expenses in the amended October report.¹⁵

⁹ *Id.*

¹⁰ *Id.*

¹¹ Referral at 3.

¹² *Id.* As mentioned in note 2, RAD adjusted the figures in the Referral to reflect 193 independent expenditures totaling \$319,077.65 for which 48-Hour Reports were not filed.

¹³ See Florida Freedom PAC, Form 99 (Sept. 26, 2013), available at <http://docquery.fec.gov/pdf/451/13941667451/13941667451.pdf>.

¹⁴ *Id.*

¹⁵ *Id.*

3. Missing and Late 24-Hour Reports Stemming from the Amended 2012 30-Day Post-General Report

On February 14, 2013, the Committee filed an Amended 2012 30-Day Post-General Report covering the period from October 18, 2012, to November 26, 2012, which included a Schedule E disclosing 1,412 IEs totaling \$158,995.32. On August 1, 2013, RAD sent an RFAI to the Committee noting that the Committee may have failed to file 24-Hour Reports for 186 independent expenditures totaling \$25,356.52, and untimely filed 24-Hour Reports for 7 independent expenditures totaling \$49,270.¹⁶

On August 29, 2013, the Committee filed a Form 99 response to the RFAI referencing the Amended 2012 30-Day Post-General Report.¹⁷ The Committee noted that the "Commission has asked about 48-hour notices disclosed on Schedule E that appear to not have been filed," but it did not explain why it failed to file the 48-Hour Reports.¹⁸ Instead, the Committee again explained that it filed 48-Hour Reports with estimated expenditures for other IEs not at issue in this referral and then disclosed actual expenses on the Amended 2012 30-Day Post-General Report.¹⁹ As for the seven IEs that the Committee reported late, the Committee conceded that it should have filed timely 24-Hour Reports.²⁰

4. Referral and Committee Response

RAD referred FFPAC to OGC for its failure to file or timely file: (A) 24-Hour Reports

¹⁶ See Referral. *Id.* As mentioned in note 2, RAD adjusted the figures in the Referral to reflect 193 independent expenditures totaling \$25,160.16 for which 24-Hour Reports were not filed.

¹⁷ See Florida Freedom PAC, Form 99 (Aug. 29, 2013), available at <http://docquery.fec.gov/pdf/091/139414777091/13941477091.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

1 for 193 independent expenditures totaling \$74,626.88; and (B) 48-Hour Reports for 228 IEs
2 totaling \$538,009.85.²¹ OGC notified the Committee of the referral on May 8, 2015.²² In its
3 response, FFPAC relies on its previous explanations to the RFAs regarding its use of estimates
4 on IE reports and actual expenses in later reports. Specifically, it argues that "the nature of [the
5 Committee's] canvassing and similar grassroots-based electoral efforts make it impossible to
6 provide perfect reporting in the timeframe required by statute and Commission regulation."²³
7 The Committee does acknowledge "some failures to file complete or timely reports." It also
8 expressed a willingness to conciliate this matter.²⁴

9 B. Analysis

10 The Act requires committee treasurers to file reports of disbursements in accordance with
11 the provisions of 52 U.S.C. § 30104(b).²⁵ This requirement includes reporting IEs made by
12 political committees other than authorized committees.²⁶ Every political committee that makes
13 IEs must report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R.

²¹ As mentioned in note 2, RAD adjusted the figures in the Referral to reflect 187 independent expenditures totaling \$74,430.04 for which 24-Hour Reports were not filed or not timely filed,; and 194 independent expenditures totaling \$529,993.69 for which 48-Hour Reports were not filed.

²² Letter from Jeff S. Jordan, Assistant General Counsel-Complaints Examination and Legal Administration, FEC to Gihan J. Perera, Treasurer of the Committee (May. 8, 2015); *see also Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009).

²³ Committee Resp. at 1. The Committee continued, "[w]ith dozens of canvassers (including contributed in-kind support from allied organizations) often working differing shifts on multiple races around the state of Florida, no organization would be able to file in a timely fashion accurate 24- and 48-Hour reports listing compensation for each canvasser... Therefore, FFP[AC] sought to provide good faith estimates at the beginning of its electoral efforts of the amounts to be paid in each race and then provided more accurate information in reports filed later. *Id.*

²⁴ *Id.* at 2.

²⁵ 52 U.S.C. § 30104(a)(1).

²⁶ 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

1 § 104.3(b)(3)(vii).²⁷ In addition, political committees that make IEs aggregating \$1,000 or more
2 with respect to a given election after the 20th day, but more than 24 hours before the date of that
3 election, must disclose them within 24 hours following the date of dissemination.²⁸ These
4 reports, known as 24-Hour Reports, must be filed within 24 hours after each time it makes or
5 contracts to make IEs aggregating an additional \$1,000.²⁹

6 A political committee that makes or contracts to make IEs aggregating \$10,000 or more
7 in connection with a given election at any time during a calendar year up to and including the
8 20th day before the date of an election shall file a report describing the expenditures within 48
9 hours.³⁰ These reports, known as 48-Hour Reports, must be filed by the end of the second day
10 "following the date on which a communication that constitutes an independent expenditure is
11 publicly distributed or otherwise publicly disseminated."³¹ A committee is required to file
12 additional reports within 48 hours after each time it makes or contracts to make IEs aggregating
13 an additional \$10,000.³²

14 The Committee did not file, or it untimely filed thirteen 24-Hour Reports for 187 IEs and
15 eleven 48-Hour Reports for 194 IEs totaling \$604,423.73. Respondents concede that "some

²⁷ 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule E the name of a person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an IE by the reporting committee. The report also must disclose the date, amount, and purpose of any such IE and include a statement that indicates whether such IE is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. IEs of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id.*, see also 11 C.F.R. § 104.3(b)(3)(vii).

²⁸ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

²⁹ 11 C.F.R. § 104.4(c).

³⁰ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

³¹ 11 C.F.R. § 104.4(b)(2).

³² *Id.*

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failures to file complete or timely” reports occurred, but argue that it was impossible to provide “perfect” reporting in the time the Act requires. They also maintain that estimating IEs on 24- and 48-Hour Reports and then disclosing the correct amount on Schedule E of the subsequent quarterly report meets the policy goals of the reporting requirements by providing timely notice of the targets and amounts of IEs and disbursements, even if specific information is not yet available.³³

But FFPAC’s argument does not apply to the activity in the Referral. The Committee did not file timely 24- and 48-Hour Reports for *any* of the IEs at issue in the Referral, so the public was deprived of all information regarding these expenditures, whether estimated or actual. Of the 381 IEs at issue in the Referral, the Committee filed the required reports concerning only seven of them, and those six reports were filed late, after the 2012 general election.

In addition, the Committee’s explanation regarding its use of estimates for other IEs not at issue in the referral undermines its position regarding the expenditures included in the referral. In other words, if the Committee could estimate its IEs on other 24- and 48-Hour Reports, it was clearly possible to estimate the IEs identified in the Referral. Yet it did not do so, nor does it explain why it could not. Thus, FFPAC has not presented any valid reason to justify its failure to file or timely file the required IE reports. Accordingly, we recommend that the Commission find reason to believe that FFPAC violated 52 U.S.C. § 30104(g).

³³ Committee Resp. at 2.

15

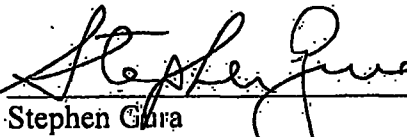
IV. RECOMMENDATIONS

1. Open a MUR in RR 15L-13;
2. Find reason to believe that Florida Freedom PAC and Gihan J. Perera in his official capacity as treasurer violated 52 U.S.C. § 30104(g);
3. Authorize conciliation with Florida Freedom PAC and Gihan J. Perera in his official capacity as treasurer prior to a finding of probable cause to believe;
4. Approve the attached Factual and Legal Analysis;

5. Approve the attached Conciliation Agreement; and

6. Approve the appropriate letter.

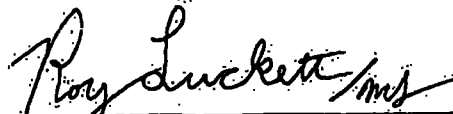
10/15/15
Date


Stephen Gara

Deputy Associate General Counsel for Enforcement



Mark Shonkwiler
Assistant General Counsel



Roy Q. Luckett
Attorney

Attachments:

1. Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR** _____

4
5 **RESPONDENT:**

6 Florida Freedom PAC
7 and Gihan J. Perera
8 in his official capacity as treasurer

9 **I. INTRODUCTION**

10 This matter was generated based on information ascertained by the Federal Election
11 Commission (the "Commission") in the normal course of carrying out its supervisory
12 responsibilities, *see* 52 U.S.C. § 30109(a)(2) (formerly 2 U.S.C. § 437g(a)(2)). Specifically, this
13 matter focuses on Florida Freedom PAC's ("FFPAC") failure to file or timely file 24-Hour and
14 48-Hour Reports of independent expenditures ("IE") totaling \$604,423.73 during the 2012
15 election cycle.¹ While FFPAC acknowledges "some failures to file complete or timely reports,"
16 it maintains that it was "impossible to provide perfect reporting in the timeframe required" given
17 the nature of its activity."² However, FFPAC inaccurately characterizes the reporting of the IEs
18 included in the referral. FFPAC did not provide good faith estimates of this activity; it either
19 completely failed to report hundreds of 2012 IEs, or reported them well after the 2012 primary
20 and general elections. Based on the available information, the Commission has determined to
21 open a matter under review ("MUR") and find reason to believe Florida Freedom PAC and
22 Gihan J. Perera in his official capacity as treasurer violated 52 U.S.C. § 30104(g) by failing to
23 file IE reports, or filing them untimely.

¹ Reports Analysis Division ("RAD"), Referral of Florida Freedom PAC, 15L-13 (May 5, 2015) ("Referral"), incorporated herein by reference. The Referral initially reflected independent expenditures totaling \$612,636.77. RAD subsequently adjusted the total figure to \$604,423.73 after discovering that some independent expenditures were referenced in error.

² Committee Resp. at 1 (June 30, 2015).

II. FACTS

FFPAC is an independent expenditure-only political committee registered with the Commission since May 11, 2012.³ RAD identified 381 IEs totaling \$604,423.73 for which FFPAC either did not file 24- and 48-Hour Notices or filed them late.⁴

Type of Notice	Report on which Expenditure disclosed on Schedule E	Number of Independent Expenditures involved	Number of Notices that were not filed	Number of Notices not timely filed	Cumulative Amount
48-Hour	Amended 2012 July Quarterly Report	1	1	N/A	\$210,915.52
48-Hour	Amended 2012 October Quarterly Report	193	10	N/A	\$319,077.65
24-Hour	Amended 2012 30-Day Post-General Report	187	7	6	\$74,430.56
	Totals	381	18	6	\$604,423.73

A. Missing 48-Hour Reports Stemming from the Amended 2012 July Quarterly Report

On October 11, 2012, the Committee filed an Amended 2012 July Quarterly Report, covering the period from April 1, 2012, to June 30, 2012, which included a Schedule E (Itemized Independent Expenditures) disclosing three IEs totaling \$279,445.52, made in support of one federal candidate.⁵ On January 10, 2013, RAD sent the Committee a Request for Additional Information ("RFAI") regarding its failure to file a 48-Hour Notice to support one independent

³ See Statement of Organization (May 11, 2012), available at <http://docquery.fec.gov/pdf/230/12030810230/12030810230.pdf>.

⁴ Referral at 1.

⁵ See Committee Amended 2012 July Quarterly Report (Oct. 11, 2012), available at <http://docquery.fec.gov/pdf/564/12954317564/12954317564.pdf>.

1 expenditure totaling \$210,915.52.⁶ On March 19, 2013, the Committee responded to the RFAI
2 by filing a Miscellaneous Electronic Submission ("Form 99"),⁷ which asserted that the
3 Committee was unable to produce the required 48-Hour Notice because it lacked the "day-by-
4 day data of its expenditures or the in-kind support received from SEIU PEA for June [2012]."⁸
5 The Committee also argued it would serve no purpose to try to produce this Notice after the
6 fact.⁹

7 **B. Missing 48-Hour Reports Stemming from the Amended 2012 October**
8 **Quarterly Report**
9

10 On February 14, 2013, the Committee filed an Amended 2012 October Quarterly Report
11 covering the period from July 1, 2012, to September 30, 2012, which included a Schedule E
12 disclosing 770 IEs totaling \$1,636,678.74, in support of four federal candidates.¹⁰ On September
13 4, 2013, RAD sent the Committee a RFAI regarding, among other things, the Committee's
14 apparent failure to file fourteen 48-Hour Notices to support 227 IEs totaling \$327,094.33.¹¹ In
15 response, the Committee filed a Form 99 on September 26, 2013, but it did not address these 227
16 IEs.¹² Instead, the Committee focused on a different portion of the RFAI relating to 48-Hour

⁶ See Referral at 2.

⁷ See Florida Freedom PAC, Form 99 (Feb. 14, 2013), available at <http://docquery.fec.gov/pdf/162/13960823162/13960823162.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Referral at 3.

¹¹ *Id.* As mentioned in note 1, RAD adjusted the figures in the Referral to reflect 193 independent expenditures totaling \$319,077.65 for which 48-Hour Reports were not filed.

¹² See Florida Freedom PAC, Form 99 (Sept. 26, 2013), available at <http://docquery.fec.gov/pdf/451/13941667451/13941667451.pdf>.

1 Notices it filed for other independent expenditures that were not itemized on Schedule E of the
2 2012 Amended October Quarterly Report.¹³ The Committee explained that it estimated its
3 expenses for canvassing activity on those 48-hour notices and then disclosed its actual expenses
4 on the amended October report."¹⁴

5 **C. Missing and Late 24-Hour Reports Stemming from the Amended 2012**
6 **30-Day Post-General Report**
7

8 On February 14, 2013, the Committee filed an Amended 2012 30-Day Post-General
9 Report covering the period from October 18, 2012 to November 26, 2012, which included a
10 Schedule E disclosing 1,412 IEs, totaling \$158,995.32. On August 1, 2013, RAD sent an RFAI
11 to the Committee noting that the Committee may have failed to file 24-Hour Reports for 186 IEs,
12 totaling \$25,356.52, and untimely filed 24-Hour Reports for 7 IEs, totaling \$49,270.40.¹⁵

13 On August 29, 2013, the Committee filed a Form 99 response to the RFAI referencing
14 the Amended 2012 30-Day Post-General Report.¹⁶ The Committee noted that the "Commission
15 has asked about 48-hour notices disclosed on Schedule E that appear to not have been filed," but
16 did not explain why it failed to file the 48-Hour Reports.¹⁷ Instead, the Committee again
17 explained that it filed 48-Hour Reports with estimated expenditures for other IEs not at issue in

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Referral. See Referral. *Id.* As mentioned in note 1, RAD adjusted the figures in the Referral to reflect 193 independent expenditures totaling \$25,160.16 for which 24-Hour Reports were not filed.

¹⁶ See Florida Freedom PAC, Form 99 (Aug. 29, 2013), available at <http://docquery.fec.gov/pdf/091/139414777091/139414777091.pdf>.

¹⁷ *Id.*

1 this referral and then disclosed actual expenses on the Amended 2012 30-Day Post-General
2 Report.¹⁸ As for the seven IEs that the Committee reported late, the Committee conceded that it
3 should have filed timely 24-Hour Reports.¹⁹

4 D. Referral and Committee Response

5 RAD referred FFPAC to OGC for its failure to file or timely file: (A) 24-Hour Reports
6 for 193 IEs totaling \$74,626.88, and (B) 48-Hour Reports for 228 IEs totaling \$538,009.85.²⁰
7 OGC notified the Committee of the referral on May 8, 2015.²¹ In its response, FFPAC relies on
8 its previous explanations to the RFAs regarding its use of estimates on IE reports and actual
9 expenses in later reports. Specifically, it argues that "the nature of [the Committee's] canvassing
10 and similar grassroots-based electoral efforts make it impossible to provide perfect reporting in
11 the timeframe required by statute and Commission regulation."²² The Committee does.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Reports Analysis Division ("RAD"), Referral of Florida Freedom PAC, 15L-13 (May 5, 2015) ("Referral"), incorporated herein by reference. The Referral initially reflected independent expenditures totaling \$612,636.77. RAD subsequently adjusted the total figure to \$604,423.73 after discovering that some independent expenditures were referenced in error.

²¹ Letter from Jeff S. Jordan, Assistant General Counsel-Complaints Examination and Legal Administration, FEC to Gihan Percera, Treasurer of the Committee (May. 8, 2015); see also *Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009).

²² Committee Resp. at 1. The Committee continued, "[w]ith dozens of canvassers (including contributed in-kind support from allied organizations) often working differing shifts on multiple races around the state of Florida, no organization would be able to file in a timely fashion accurate 24- and 48-Hour reports listing compensation for each canvasser...Therefore, FFP[AC] sought to provide good faith estimates at the beginning of its electoral efforts of the amounts to be paid in each race and then provided more accurate information in reports filed later. *Id.*

acknowledge "some failures to file complete or timely reports." It also expressed a willingness to conciliate this matter.²³

III. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C. § 30104(b).²⁴ This requirement includes reporting IEs made by political committees other than authorized committees.²⁵ Every political committee that makes IEs must report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R. § 104.3(b)(3)(vii).²⁶ In addition, political committees that make IEs aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24 hours before the date of that election, must disclose them within 24 hours following the date of dissemination.²⁷ These reports, known as 24-Hour Reports, must be filed within 24 hours after each time it makes or contracts to make IEs aggregating an additional \$1,000.²⁸

²³ *Id.* at 2.

²⁴ 52 U.S.C. § 30104(a)(1).

²⁵ 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

²⁶ 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule E the name of a person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an independent expenditure by the reporting committee. The report also must disclose the date, amount, and purpose of any such independent expenditure and include a statement that indicates whether such independent expenditure is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id.*, *see also* 11 C.F.R. § 104.3(b)(3)(vii).

²⁷ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

²⁸ 11 C.F.R. § 104.4(c).

1 A political committee that makes or contracts to make IEs aggregating \$10,000 or more
2 in connection with a given election at any time during a calendar year up to and including the
3 20th day before the date of an election shall file a report describing the expenditures within 48
4 hours.²⁹ These reports, known as 48-Hour Reports, must be filed by the end of the second day
5 “following the date on which a communication that constitutes an IE is publicly distributed or
6 otherwise publicly disseminated.”³⁰ A committee is required to file additional reports within 48
7 hours after each time it makes or contracts to make IEs aggregating an additional \$10,000.³¹

8 The Committee did not file or it untimely filed thirteen 24-Hour Reports for 187 IEs and
9 eleven 48-Hour Reports of for 194 IEs totaling \$604,423.73. Respondents concede that “some
10 failures to file complete or timely” reports occurred, but argue that it was impossible to provide
11 “perfect” reporting in the time the Act requires. They also maintain that estimating IEs on 24-
12 and 48-Hour Reports and then disclosing the correct amount on Schedule E of the subsequent
13 quarterly report meets the policy goals of the reporting requirements by providing timely notice
14 of the targets and amounts of IEs and disbursements, even if specific information is not yet
15 available.³²

16 But FFPAC’s argument does not apply to the activity in the Referral. The Committee did
17 not file timely 24- and 48-Hour Reports for *any* of the IEs at issue in the Referral, so the public
18 was deprived of all information regarding these expenditures, whether estimated or actual. Of

²⁹ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

³⁰ 11 C.F.R. § 104.4(b)(2).

³¹ *Id.*

³² Committee Resp. at 2.

1 the 381 IEs at issue in the Referral, the Committee filed the required reports concerning only
2 seven of them. In addition, all six of the reports the Committee filed regarding those seven IEs
3 were filed late, after the 2012 general election.

4 In addition, the Committee's explanation regarding its use of estimates for other IEs not
5 at issue in the referral undermines its position regarding the expenditures included in the referral.
6 In other words, if the Committee could estimate its IEs on other 24- and 48-Hour Reports, it was
7 clearly possible to estimate the IEs identified in the Referral. Yet it did not do so, nor does it
8 explain why it could not. Thus, FFPAC has not presented any valid reason to justify its failure to
9 file or timely file the required 24-Reports. Accordingly, The Commission finds reason to believe
10 that FFPAC violated 52 U.S.C. § 30104(g).